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4 THE HONORABLE JUDGE MARSHA J. PECHMAN
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

10 MICHAEL J McKENNA and DARLA M.
11 McKENNA, husband and wife,

12 Plaintiffs,

13 v.

14 HOME DEPOT U.S.A., INC., a foreign profit
15 corporation,

16 Defendants.

17 CAUSE NO. 3:21-CV-05038-MJP

18 STIPULATED MOTION TO CONTINUE
19 TRIAL DATE AND AMEND THE CASE
20 SCHEDULE

21 NOTING ON MOTION CALENDAR:
22 SEPTEMBER 23, 2021

23 *[CLERKS' ACTION REQUIRED]*

24
25 I. **STIPULATED MOTION**

26 Pursuant to LR 7(d)(2), Plaintiffs Michael J. McKenna and Darla M. McKenna
(hereinafter "Plaintiffs") and Defendant Home Depot U.S.A., Inc. (hereinafter "Defendant"), by
and through their respective counsel of record, hereby move this Court to continue the trial date
in the above-captioned matter for approximately three months, and to amend the order setting
pretrial deadlines in accordance with the continued trial date. There remains outstanding
discovery to conduct in this matter, which cannot be completed by the November 26, 2021
discovery completion deadline. This is primarily due to the unexpected circumstances

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1 surrounding COVID-19 and the associated delay with obtaining medical records. Therefore, a
 2 continuance is required to allow for the completion of necessary discovery and to engage in
 3 meaningful alternative dispute resolution.

4 **II. FACTS AND PROCEDURAL HISTORY**

5 Plaintiffs brought this action for damages arising out of a personal injury at a Home Depot
 6 store. The Order Setting Trial Date & Related Dates was signed on March 30, 2021, setting the
 7 trial date for April 25, 2022 and the discovery cutoff for November 26, 2021.¹ There have been
 8 no previous motions for continuance of the trial of this matter.

9
 10 The parties encountered a circumstance in discovery that thwarted their efforts to
 11 complete discovery by the November 26, 2021 deadline. Since the Court issued the Order
 12 Setting Trial Date & Related Dates on March 30, 2021, Mr. McKenna underwent a second
 13 surgery to remove hardware that had been left in his shoulder following the first surgery. This
 14 surgery took place on April 14, 2021. Thus, the medical records for such procedure were only
 15 recently obtained by the parties. Further, on September 9, 2021, the parties received an invoice
 16 from U.S. Legal for collection of X-ray films from Capital Medical Center that the parties are
 17 still expecting. Generally once an invoice is received the records can be expected within the
 18 next 30 days. These records were requested on June 10, 2021.

19
 20 Likewise, even though Mr. McKenna executed stipulations in February 2021 to obtain
 21 his employment records, the parties are still waiting to obtain the vast majority of these records.

22
 23 Per the case schedule, the parties are required to disclose their expert opinions by
 24 September 27, 2021. This is not feasible considering that not all of the medical and employment

25
 26 ¹ Dkt. at 10.

1 records have been received. In order for both parties' experts to render opinions regarding Mr.
2 McKenna's condition, they need to be able to review all of the medical records, including X-
3 rays, which we have yet to receive. Once the parties' experts have provided medical opinions,
4 a vocational rehabilitation specialist and/or economist will rely upon such opinions to formulate
5 their own opinions regarding any kind of potential economic loss. Given the information that
6 is outstanding, the parties request a short continuance to ensure all necessary records are obtained
7 prior to depositions, expert discovery and alternative dispute resolution.

8 Furthermore, the parties have agreed to participate in mediation once the outstanding
9 records are received. Each party will likely retain several experts and the parties are making a
10 good faith effort to resolve the claims at mediation without incurring significant expenses of
11 conducting Fed. R. Civ. P. 35 examinations and expenses for the experts' time for numerous
12 depositions. Regardless of mediation, the parties will be unable to comply with the Court's order
13 regarding expert disclosures, which cannot be completed prior to the September 27, 2021
14 deadline. It follows that the parties will also be unable to complete discovery associated with
15 the experts' opinions or conduct party depositions, Fed. R. Civ. P. 35 examinations and expert
16 depositions, in compliance with the current case schedule's discovery deadline of November 26,
17 2021.

18 **III. EVIDENCE RELIED UPON**

19 This motion relies upon the pleadings and other filings of record.

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IV. POINTS AND AUTHORITY

The decision to grant or deny a requested continuance lies with the broad discretion of the district court, and will not be disturbed on appeal absent a clear abuse of discretion.² The relevant factors for appellate review of an order denying a motion for continuance are: (1) diligent efforts by party(ies) requesting continuance; (2) usefulness of the continuance requested; (3) inconvenience of continuance to other party(ies); and (4) prejudice to requesting party caused by denial of the requested continuance.³ Here, all the relevant factors weigh in favor of granting the requested continuance.

First, both Plaintiffs and Defendant have been diligent in their efforts to complete discovery in this matter. Stipulations authorizing collection of medical and employment records were executed on February 17, 2021 and were processed shortly thereafter. At this time, the parties are waiting on the record retrieval company as well as the individual facilities, who are extremely backlogged, to obtain the necessary employment and medical records. Second, the short continuance requested is necessary as the deadline to provide expert opinions is September 27 and the parties have yet to receive all meaningful records that would allow an expert to render a complete opinion. The parties simply need more time to allow their experts to exchange information prior to engaging in additional discovery, which cannot occur unless there is a short continuance. A resolution of this case is dependent upon the receipt of complete medical and employment records and the parties require additional time to obtain the records prior to engaging in depositions, mediation and a potential Fed. R. Civ. P. 35 examination should

² *United States v. Flynt*, 756 F.2d 1352, 1358, amended, 764 F.2d 675 (9th Cir. 1985).

³ *Flynt*, 756 F.2d 1359-62.

1 mediation be unsuccessful. Third, there is no inconvenience to the parties as they have stipulated
 2 to such continuance. Finally, the parties would be severely prejudiced if they were not able to
 3 provide their respective experts all the essential information to formulate their opinions and
 4 conduct a potential Fed. R. Civ. P. 35 examination.

5 This is the first request for a continuance in this case. The parties present this request
 6 jointly after conferring in good faith to find a date and specified continuance length. In order to
 7 alleviate these problems, the parties have stipulated to a continuance of the trial date in this
 8 matter. The parties have conferred in good faith to find a reasonable amount of time in which to
 9 complete necessary discovery and to prepare their respective cases for trial while being mindful
 10 of seeking resolution. The parties respectfully request that trial begin on or about August 1,
 11 2022, pending the Court's availability, and that the dates and deadlines conform to that requested
 12 date. Counsel for the parties certify that the parties that they represent have been advised of this
 13 motion to continue the trial date and associated dates and deadlines, and the bases for this motion.
 14
 15 The clients of undersigned counsels agree with this motion and its bases.

16 Therefore, the parties stipulate to a continue the trial date and corresponding case
 17 schedule deadlines for approximately three months. The new proposed deadlines are set forth
 18 below:

20 **JURY TRIAL**

AUGUST 1, 2022

21 Length of Trial

8-10 days

22 Expert Witness Disclosure/Reports
 23 Under FRCP 26(a)(2) Due

December 27, 2021

24 All motions related to discovery must be filed and
 25 noted on the motion calendar on the third
 26 Friday before discovery closes pursuant to CR 7(d)

January 27, 2021

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Deadline to Complete Discovery	February 28, 2022
All dispositive motions and motions challenging expert witness testimony must be filed by	March 25, 2022
All motions <i>in limine</i> must be filed by	June 21, 2022
Agreed Pretrial Order due	July 18, 2022
Pretrial Conference	Set by the Court
Trial Briefs, proposed jury instructions, proposed voir dire, agreed neutral statement of the case, deposition designations, and trial exhibits due	July 18, 2022

V. CONCLUSION

The parties agree that additional discovery must be conducted and the discovery completion date on the current case schedule cannot accommodate such discovery. In attempt to alleviate any delay, the parties have agreed to participate in mediation once all records are received. No previous continuances have been granted and the parties will be prejudiced if the current case is not continued. Good cause exists to continue the trial by approximately three months as indicated above. Therefore, the parties respectfully request that their motion for a trial continuance be granted and that the Clerk be directed to enter an Amended Minute Order Setting Pretrial Deadlines in accordance with the continued trial date, as determined by this Court.

DATED this 23rd day of September, 2021 in Seattle, Washington.

HOLT WOODS & SCISCIANI LLP

RODGERS KEE CARD & STROPHY, P.S.

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ORDER

Based upon the foregoing stipulated motion, the Court finds good cause to extend the trial date and case deadlines given the Parties' discovery efforts and the delays they have identified notwithstanding their diligence. But the Court rejects the Parties' desire to mediate as a valid basis to extend any of the case deadlines. The Parties are free to mediate, but this non-mandatory decision will not serve as a basis to impact the Court's case deadlines.

IT IS HEREBY ORDERED that the trial date and corresponding deadlines are reset as follows:

- Deadline for Fed. R. Civ. P. 26(a)(2) Disclosures: **December 27, 2021**
- All motions related to discovery must be filed and noted on the motion calendar on the third Friday before discovery: **January 27, 2022**
- Discovery Completed By: **February 28, 2022**
- Deadline for filing dispositive motions and motions challenging expert witness testimony: **March 25, 2022**
- All motions *in limine* must be filed by: **June 21, 2022**
- Agreed Pretrial Orders due: **July 18, 2022**
- Pretrial Conference: **July 21, 2022 at 1:30 PM**
- Trial briefs, proposed jury instructions, proposed voir dire, agreed neutral statement of the case, deposition designations and trial exhibits due: **July 18, 2022**
- Trial shall commence on **August 1, 2022 at 9:00 AM.**

DATED this 24th day of September, 2021.

Wesley P. Tolman

Marsha J. Pechman
United States Senior District Judge